

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00313-16
45-004-16-1-5-00466-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-236-001.000-004
Assessment Years: 2013 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2016 assessments of his property located at 1101 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$2,600 for 2013 and \$2,200 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On July 9, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Respondent’s Exhibit 1: Real Property Maintenance Report
 - b. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

¹ Nowacki offered no exhibits.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. Here, there was no change in the subject property's assessment from 2012 to 2013, and it decreased from 2015 to 2016. Nowacki therefore bears the burden of proof for both 2013 and 2016.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The county owned the subject property since 1991 and the property churned through tax sales for 25 years until Nowacki purchased it. The subject property is an unbuildable lot with no access to streets or roads. The Assessor applied a 50% influence factor for those characteristics, but did not correct the assessed value. *Nowacki testimony.*
 - b. Only one of the Property Record Cards ("PRC") presented during the three preceding hearings held on July 9, 2018 is accurate. The accurate PRC shows the neighborhood as declining and its assessed value substantiates that. Another PRC shows a parcel as being in an improving neighborhood, but the assessed values clearly show a decline. Another PRC shows a neighborhood life cycle stage as static. *Nowacki testimony.*
 - c. In contrast, the subject property's PRC lists its status as "other" without further explanation, as opposed to improving, declining or static. Nowacki claims that this lack of designation reflects the Assessor's confusion as to what the subject's assessment should be. He contends a reasonable market value for the subject property for both assessment years is \$900. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor contends there is no evidence to support a change. The 2013 and 2016 assessments should therefore remain at \$2,600 and \$2,200, respectively. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2016 assessments. The Board reached this decision for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property’s 2013 and 2016 assessments should be \$900, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Furthermore, Nowacki’s other contentions focused on attacking the Assessor’s alleged errors in applying an influence factor and identifying the state of the subject property’s neighborhood. Even if the Assessor made errors, simply attacking his methodology is insufficient to rebut the presumption that the assessments are correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- e. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2016 assessments.

ISSUED: October 1, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.